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In the Supreme Court of the United States

OCTOBER TERM, 1959.

No. 813

LOCAL 24 OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL-CIO, and KENNETH BURKE, President and Business Agent of Local 24,

Petitioners,

vs.

REVEL OLIVER and A.C.E. TRANSPORTATION COMPANY, INC., and INTERSTATE TRUCK SERVICE, INC.,

Respondents.

BRIEF OF REVEL OLIVER AND INTERSTATE TRUCK SERVICE, INC. IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

BERNARD J. ROETZEL,
901 First National Tower,
Akron 8, Ohio,
Counsel for Revel Oliver, Respondent.

CHARLES R. IDEN,
2200 First National Tower,
Akron 8, Ohio,
Counsel for Interstate Truck Service, Inc., Respondent.

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HISTORY.

This case had its inception in a petition filed by the respondent, Revel Oliver, in which he alleged that he was the owner and lessor of six trucks and four trailers, each of which was under a lease agreement with one or the other of the carrier respondents. He further alleged that the petitioners herein and others had, by action and threats and other means, demanded and required that the motor carrier respondent cancel or alter or replace the leases in effect between himself and the motor carriers and that, unless restrained and enjoined, the defendant-carriers by agreement with the petitioner would cancel his leases. It was his claim that an irreparable injury would result for which there was no adequate remedy at

law and that such conduct deprived him of his free right to enter into private contracts for the leasing of his equipment and would result in an unlawful restraint of trade.

Upon a trial de novo in the Court of Appeals for the 9th Judicial District of Ohio, the Court of Appeals found the allegations to be true (in a finding R. 237) and permanently enjoined the petitioners and the carriers involved from carrying out the effects, requirements or terms of any agreement which would require the alteration, cancellation or violation of Oliver's leases and further enjoined such defendants from entering into agreements, the purpose, requirement, intent or tendency of which was to fix or determine the rate to be charged for the use of Oliver's equipment or to fix or determine the rates and the use or the return for Oliver's capital investment in said equipment.

Thereafter, the United States Supreme Court in an opinion reported at 358 U. S. 283, decided that the Ohio courts did not give proper significance to Article XXXII of the Union Contract:

> "* * * narrowly restricted application to the times *when the owner drives his leased* vehicle for the carrier, and to the adverse effects upon the negotiated wage scale which might result when the rental for the use of the leased vehicle was unregulated at *these times*." (Emphasis ours.)

The United States Supreme Court reversed the Ohio judgment and issued a mandate directed to the Court of Appeals, remanding the case for "proceedings not inconsistent with the opinion of this Court." In compliance with this mandate, the Ohio Court of Appeals ordered and decreed that the previous order as it concerned and applied to Revel Oliver as a lessor-driver "is set aside and

held for naught," but as it concerns and applies to Revel Oliver, "as a lessor-owner and employer of drivers of his equipment, the order of injunction should continue in full force and effect." (Pltf's. Brief, Appendix D).

QUESTION PRESENTED.

Did the Ohio Court of Appeals comply with the mandate issued to it remanding the case for "proceedings not inconsistent with the opinion" of the United States Supreme Court?

ARGUMENT.

Before setting forth reasons why the writ should be denied, it must be noted that we cannot accept the petitioners' view of the question presented (Petitioners' Brief page 2). We further note that this matter can be determined by an analysis of the questions presented to and decided by the courts without the citation of authority.

When petitioners state categorically (Petitioners' Brief, page 4) that the Central States Area Over-the-Road Motor Freight Agreement requires the "signatory employers to utilize only their own employees in the performance of work within the scope of the bargaining unit" as a premise for a claim that the Ohio court's decree restraining its enforcement except "when the owner drives his leased equipment" is erroneous, the question as presented loses validity since it assumes what is not true. Petitioner relies on its present interpretation of Sections 4 and 5 of Article XXXII to support its position. The fact that the opinion of this Court determined that, "Article XXXII in nowise apply (applies) to the terms of lease of a vehicle when driven by a driver not the owner" is forgotten or ignored. We believe it would be a gross misconception not in con-

formity with the judgment of the Supreme Court to conclude that this Court intended that Sections 4 and 5 of Article XXXII be given the interpretation now placed on them by petitioners. (That lessees' employees must drive all leased equipment, Petitioners' Brief page 4.) We believe the opinion of this Court herein involved held only that the Union and the carriers had a right to bargain with respect to the agreement reached in Article XXXII and that the Ohio Anti-Trust Law must yield to an agreement within the proper field of employer-employee relationships, i.e., the times when the owner drives his leased vehicle for the carrier.

The reason and logic of this Court's opinion could have no application to the right of the Ohio courts to enjoin the unlawful interference of threatened cancellation of leases where Oliver's employees, and not Oliver, drove the leased equipment.

To determine the question presented, it is necessary to examine not only the Supreme Court opinion, 358 U. S. 283, but the record, including the pleadings, the testimony and the findings and opinions of the Ohio courts, in addition to the journal entry of the Court of Appeals conforming to the mandate.

The Court of Appeals' journal entry conforming to the mandate is set forth in full in petitioners' brief (Appendix D). It cogently and concisely sets forth the conclusions of the Court of Appeals in its proceeding conforming to the mandate. It is quite true, as petitioners suggest, that the United States Supreme Court did not pass upon the legality of the injunction as it related to Oliver as lessor and non-driver. It is equally true, however, that the Ohio courts *did* determine this question when they enjoined the interference with Oliver's leases which they found threatened or present.

The fact that the petitioners had conceded that Article XXXII had no *proper* application to Oliver as a fleet owner—a position now departed from—could not alter the fact that the Ohio court had enjoined interference with Oliver's leases without bisecting Oliver as (1) a lessor-driver, and (2) a lessor-nondriver. In now contending that Sections 4 and 5 of Article XXXII require a carrier to use only its own employees in the operation of leased equipment, which would thus require the cancellation or alteration of all of Oliver's leases, the Union conforms its stated position to the factual position it had taken prior to the issuance of the injunction. This seems to be an untenable position not supported by the Article itself, nor the evidence upon trial, nor the previous claims of counsel, nor the Ohio Court of Appeals findings and judgments, nor the opinion of this Court itself. These numerous prior disclaimers of application of Article XXXII to Oliver's leases as a fleet owner (R. 93, 123, 202, 217) did not prevent the Ohio court from finding that the actual position of the Union was a contrary one. It found Oliver would be injured if the provisions of Article XXXII were carried out (viz: against him); that he had no remedy under the Labor Management Relations Act or any other Federal legislation; that it had jurisdiction and the duty to restrain the defendants from enforcing the terms of Article XXXII against Oliver in his total entity, i.e., as a lessor-driver and as a lessor-non-driver.

It must be borne in mind that respondent-Oliver's original petition was filed and a preliminary injunction obtained after the Union and the carriers informed Oliver that his leases were about to be cancelled (R. 91 and 166). This threat was not limited to the leases as they might involve Oliver at the times he drove. A letter (Exhibit 32) referred to in the Record at page 140, which was

identified as having been addressed to Oliver advising him of the impending cancellation of his leases, further supports the conclusion of the trial court, that no narrow restriction of Article XXXII was applied by the petitioner-union. Further, the only reasonably inference which could be obtained from the testimony of Business Agent Burke is that the cancellation or alteration of *all* of Oliver's leases would have been insisted upon had it not been for the injunction (R. 103).

These matters are set forth only to indicate that the Court of Appeals was fully justified in its finding of fact (reiterated in the journal entry dissolving its injunction as it related to owner-drivers) that the petitioner-union in fact applied Article XXXII *at all times* to the operation of Oliver's vehicles when driven by his employees, as well as when driven by Oliver himself. That this finding was warranted is conclusively established by the petitioners' contention (now) that it does so apply and the argument of petitioners that because it so applies, the Court of Appeals should have dissolved its injunction in its entirety. Thus, the Union would have this Court accomplish what it in fact attempted to do until enjoined, its disclaimers notwithstanding. If this Court agrees with the petitioners, it seems reasonable that the petitioners would *again* insist that the carriers cancel or alter all of Oliver's leases, rather than only those involving Oliver as a driver. This Court could not so hold without re-writing Article XXXII, nor could it extend the shield of collective bargaining beyond the agreement itself. It has not yet held that the Ohio courts cannot protect Oliver from wrongful interference with lawful contracts not within the protection afforded by Article XXXII. In so protecting Oliver, there has been no invasion of the area of federally protected collective bargaining since the only area on which the Union and the

carriers reached agreement was the narrowly restricted area intended to cover owner-drivers when driving. The carriers never agreed not to use leased equipment. They agreed only that owner-drivers would come within Article XXXII—nothing more.

Article XXXII may have effectively bisected Oliver, but the Court of Appeals journal entry conforming to the mandate merely continued a bisection it had erroneously failed to make in the first instance and which the opinion of the court required. The contention of the petitioners that the matter was not litigated and that they were deprived of due process in this respect has no basis in fact. The Court of Appeals fully implemented the mandate in the only way it could consistent with the Court's opinion.

CONCLUSION.

The journal entry of the Court of Appeals for the 9th Judicial District of Ohio fully conforms to the judgment and decree of this Court, and all issues have been decided by this Court. For the foregoing reasons, the petition for writ of certiorari should be denied.

Respectfully submitted,

BERNARD J. ROETZEL,
901 First National Tower,
Akron 8, Ohio,
Counsel for Revel Oliver, Respondent.

CHARLES R. IDEN,
2200 First National Tower,
Akron 8, Ohio,
Counsel for Interstate Truck Service, Inc., Respondent.